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EXAMINER
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USTARIS, JOSEPH G

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2623

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/844,976  
Filing Date: April 26, 2001  
Appellant(s): SIBLEY, ERIN H.

**MAILED**  
**MAY 23 2006**  
**Technology Center 2600**

\_\_\_\_\_  
Georgann S. Grunebach  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 30 January 2006 appealing from the Office action mailed 17 October 2005.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

6,160,989	Hendricks et al.	12-2000
6,556,248 B1	Kim	4-2003

<b>6,711,379 B1</b>	<b>Owa et al.</b>	<b>3-2004</b>
<b>5,729,549</b>	<b>Kostreski et al.</b>	<b>3-1998</b>

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-7 and 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks et al. (US006160989A) in view of Kim (US006556248B1).

Regarding claim 1, Hendricks et al. (Hendricks) discloses a "system of distributing electronic content" over various transmission media, e.g. CATV system (See Fig. 1). The system includes a "satellite" (See Fig. 1), "a network operations center uplinking electronic content to said satellite" (See Fig. 1, 202), "a terrestrial over-the-air digital broadcast center receiving said electronic content from said satellite" (See Fig. 1, 208; column 7 lines 11-34), and a "user appliance receiving said electronic content" (See Fig. 1, 220). Furthermore, after receiving the "electronic content", the system "generates digital over-the-air electronic content" in order to successfully deliver the digital content to the user's site (See Fig. 3; column 7 lines 35-65 and column 10 lines 1-51). However, Hendricks, after receiving the "electronic content", does not disclose using the "vertical blanking interval (VBI)" to deliver the "digital over-the-air electronic content".

Hendricks discloses that analog signals are used between the headend and user terminals (See Fig. 3). Kim discloses a general TV broadcast system and TV receiving apparatus. The system is able to load HTML image and audio data or "digital electronic

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content” within the VBI or “during a VBI of an analog broadcast signal” (See Figs. 1 and 3; column 5 lines 28-53). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the cable headend disclosed by Hendricks to be able to transmit some of the data or “electronic content” within the VBI of an “analog broadcast signal”, as taught by Kim, in order to efficiently use the bandwidth available between the headend and user terminals thereby increasing the efficiency of the overall system.

Regarding claim 2, as disclosed in claim 1 rejection, Hendricks discloses a satellite (stratospheric platform) communicates (coupled) with the cable headend (over the air broadcast center).

Regarding claim 3, Hendricks discloses that one of the transmission media can be a cellular network (See Hendricks column 7 lines 29-34), which inherently includes a “cell tower”.

Regarding claim 4, Hendricks in view of Kim discloses different types of transmission media (e.g. cellular networks) to the home and suggests that similar technology can be used interchangeably (column 7, lines 29-34). However, Hendricks does not explicitly disclose a TV broadcast tower.

Official Notice is taken that it is well known in the art that TV broadcast towers are used as a transmission scheme. Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the system disclosed by Hendricks in view of Kim to include a TV broadcast tower in order to provide more versatility, options of transmission, and robustness of transmission in case

of malfunction by one scheme (For support of Official Notice; see 5,729,549 Fig. 1, column 1 line 65 – column 2 line 18).

Regarding claims 5 and 6, Hendricks discloses both digital audio and video (See column 5 lines 6-16).

Regarding claim 7, the set top terminals or “user appliance” is “fixed” (See Hendricks Fig. 1).

Claim 9 contains the limitations of claim 1 (wherein the system performs the method) and is analyzed as previously discussed with respect to that claim.

Claim 10 contains the limitations of claims 2 and 9 and is analyzed as previously discussed with respect to those claims.

Claim 11 contains the limitations of claims 3 and 9 and is analyzed as previously discussed with respect to those claims.

Claim 12 contains the limitations of claims 4 and 9 and is analyzed as previously discussed with respect to those claims.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks et al. (US006160989A) in view of Kim (US006556248B1) as applied to claims 1-7 and 9-12 above, and further in view of Owa et al. (US006711379B1).

Hendricks in view of Kim does not disclose that the “user appliance is mobile”.

Owa et al. (Owa) discloses a digital broadcasting system and terminal. Owa discloses mobile receiving terminals that can receive broadcasts from various sources (See Figs. 1, 23, and 24; column 7 lines 21-35). Therefore, it would have been obvious

to one with ordinary skill in the art at the time the invention was made to modify the system disclosed by Hendricks in view of Kim to include mobile receiving terminals or "mobile user appliance", as taught by Owa, in order to expand the capabilities of the system thereby making the system more convenient for the user by enabling the user to roam freely with the mobile terminal.

#### **(10) Response to Argument**

Regarding claims 1, 5-7, and 9, in response to appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the appellant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). It is well known in the art to utilize the VBI to transport additional data as disclosed by Kim. Appellant states that Hendricks is a generic communication system that only conventional broadcasting without extra content is set forth. However, the system disclosed by Hendricks is capable of providing more than just conventional broadcasting as suggested by Figs. 8A-8C and column 23 line 30 – column 24 line 2. Furthermore, Kim discloses a system that delivers supplemental/additional content using the VBI that would result in efficient usage of available bandwidth thereby providing high volume data transfers. This technique

disclosed by Kim would efficiently use the bandwidth available between the headend and user terminals thereby increasing the efficiency of the overall system.

Regarding claims 2 and 10, appellant argues that a satellite is not a stratospheric platform. However, reading the claims in the broadest sense, the satellite disclosed by Hendricks is coupled with the cable headend thereby meeting the limitations of the claim. Furthermore, appellant's specification does not disclose any examples of stratospheric platforms other than satellites. Therefore, a satellite meets the limitation of "stratospheric platform" wherein the satellite is a high altitude communications platform. Appellant is reminded that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Regarding claims 3 and 11, appellant argues the network controller/cable headend of Hendricks (See Fig. 1) is not a cellular tower. However, Hendricks does disclose that the cable headend can be used with various other program delivery systems such as cellular networks, which inherently uses cellular towers (See Hendricks column 7 lines 29-34).

Regarding claims 4 and 12, appellant argues that a TV broadcast tower is not shown. However, Hendricks discloses different types of transmission media (e.g. cellular networks) to the home and suggests that similar technology can be used interchangeably (column 7, lines 29-34). The examiner took Official Notice that it is well known in the art that TV broadcast towers are used as a transmission scheme. Support

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for the Official Notice is found in Patent 5,729,549, Fig. 1, column 1 line 65 – column 2 line 18.

Regarding claim 8, appellant makes similar arguments with respect to claim 1, please see the discussion above. Furthermore, the mobile device disclosed by Owa can receive information from various sources, e.g. satellite and ground-wave broadcasts (television broadcasts and/or radio broadcasts) (See Owa Figs. 1, 23, and 24; column 7 lines 21-35).

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.


For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,

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